

FCC MAIL SECTION

JUN 6 11 36 AM '95
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 95-75

In the Matter of

Amendment of Section 73.202(b), RM-8615
 Table of Allotments,
 FM Broadcast Stations.
 (Blossom, Texas, and
 DeQueen, Arkansas)

**NOTICE OF PROPOSED RULE MAKING
 AND
 ORDER TO SHOW CAUSE**

Adopted: May 25, 1995;

Released: June 6, 1995

Comment Date: July 28, 1995

Reply Comment Date: August 14, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Red River Wireless Communications ("petitioner"), requesting the allotment of Channel 224C2 to Blossom, Texas, as the community's first local aural transmission service. In order to accommodate the allotment of Channel 224C2 to Blossom, petitioner also requests the substitution of Channel 227A for Channel 224A at DeQueen, Arkansas, and the modification of Station KDQN(FM)'s license accordingly. Petitioner states that it will apply for Channel 224C2 at Blossom and also will reimburse the licensee of Station KDQN(FM) for the reasonable costs associated with the change in channel at DeQueen.

2. We believe the public interest would be served by proposing the allotment of Channel 224C2 to Blossom,¹ and the substitution of Channel 227A for Channel 224A at DeQueen, Arkansas, since the proposal could provide Blossom with its first local aural transmission service. Channel 224C2 can be allotted to Blossom in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.0 kilometers (6.8 miles) east in order to avoid a short-spacing conflict with a pending proposal to allot Channel 225A at Bells, Texas, in MM Docket No. 94-152 (RM-8565).² Channel 227A can be allotted to DeQueen in compliance with the Commission's minimum separation requirements and can be used at the site specified in Station KDQN(FM)'s license.³ In consideration of this proposal, we will direct an *Order to Show Cause* to the licensee of Station KDQN(FM) why its license should not be modified to specify operation on Channel

227A in lieu of Channel 224A. Petitioner will be required to reimburse the licensee of Station KDQN(FM) for the reasonable costs of moving to Channel 227A if this proposal is ultimately adopted.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	City	Present	Channel No. Proposed
	Blossom, Texas	--	224C2
	DeQueen, Arkansas	224A	227A

4. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Jay W. Bunyard and W. Bunyard, licensees of Station KDQN(FM), DeQueen, Arkansas, SHALL SHOW CAUSE why their license SHOULD NOT BE MODIFIED to specify operation on Channel 227A as proposed herein instead of the present Channel 224A.

5. Pursuant to Section 1.87 of the Commission's Rules, Jay W. Bunyard and W. Bunyard may, not later than **July 28, 1995**, file a written statement showing with particularity why their license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Jay W. Bunyard and W. Bunyard to furnish additional information. If Jay W. Bunyard and W. Bunyard raise a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Jay W. Bunyard and W. Bunyard will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

6. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to Jay W. Bunyard and W. Bunyard, P.O. Box 311, DeQueen, Arkansas, 71832.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **July 28, 1995**, and reply comments on or before **August 14, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C.

¹ According to the 1990 U.S. Census, Blossom is an incorporated community with a population of 1,440 persons.

² The coordinates for Channel 224C2 at Blossom, Texas, are

North Latitude 33-40-07 and West Longitude 95-16-13.

³ The coordinates for Channel 227A at DeQueen, Arkansas, are North Latitude 34-01-57 and West Longitude 94-19-43.

20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

William J. Pennington, III
5519 Rockingham Road-East
Greensboro, North Carolina 27407
(Counsel for petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.